

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

HENRY FLOYD LOVE, JR.,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-08-390-M
)	
JUSTIN JONES, DOC-Director,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION

Mr. Henry Floyd Love, Jr. has filed a petition for habeas relief.¹ With the petition, he filed a motion for leave to proceed *in forma pauperis*. The motion should be denied.

Mr. Love's motion reflects only \$1.86 in his institutional account as of April 8, 2008. Only seven days earlier, however, Mr. Love had obtained \$20.00 from the prison. Six days after signing the motion for pauper status, Mr. Love made purchases from the commissary for \$18.46, depleting his account. Rather than purchase items from the commissary, however, Mr. Love could have paid the \$5.00 filing fee² with only a fraction of the money he had received from the prison.³

¹ The petition was not signed by Mr. Love.

² See 28 U.S.C. § 1914(a) (2000).

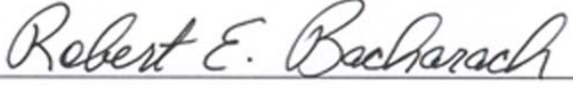
³ See *Cosby v. Meadors*, 351 F.3d 1324, 1327 (10th Cir. 2003) ("when a prisoner has sufficient income to pay a monthly partial filing fee and instead spends his money on amenities at the prison canteen, he cannot be excused for failing to make the required partial payments").

Because Mr. Love had adequate funds for the filing fee, the undersigned recommends that the Court: (1) deny the motion for leave to proceed *in forma pauperis*, (2) order payment of the filing fee within twenty days,⁴ and (3) dismiss the action without prejudice if Mr. Love fails to timely pay the filing fee or show good cause for the failure to do so.⁵

The Petitioner is advised of his right to object to this report and recommendation by May 7, 2008. *See* W.D. Okla. Local Civil Rule 72.1. If the Petitioner does object, he must file a written objection with the Court Clerk for the United States District Court, Western District of Oklahoma. The Petitioner is further advised that if he does not timely object, he would waive his right to appellate review over a denial of pauper status in the district court. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This report and recommendation terminates the referral.⁶

Entered this 17th day of April, 2008.


Robert E. Bacharach
United States Magistrate Judge

⁴ *See* W.D. Okla. LCvR 3.3(e).

⁵ *See* W.D. Okla. LCvR 3.3(e); *see also Cosby v. Meadors*, 351 F.3d 1324 (10th Cir. 2003) (upholding dismissal of a federal inmate's civil rights complaint based on noncompliance with orders requiring installments on the filing fee or to show cause for the failure to pay).

⁶ The undersigned is contemporaneously striking the petition. That order is not affected by the present report.